

Notice of Allowability

Application No.

10/653,681

Examiner

Brandon J. Fetterolf, PhD

Applicant(s)

DAI ET AL.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 07/11/2005.
2. ☒ The allowed claim(s) is/are 4,6 and 9-11.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

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Dai, Ken Shwo

Response to the Amendment

The Amendment filed on 07/11/2005 in response to the previous Non-Final Office Action (04/12/2005) is acknowledged and has been entered.

Claims 1-4, 6, 9-19, 22, 24 and 26-28 are currently pending.

Claims 1-3, 12-19, 22, 24 and 26-28 are withdrawn from consideration as being drawn to non-elected inventions.

Claims 4, 6 and 9-11 are currently under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

All previous rejections and/or objections are withdrawn in view of applicant's amendments and arguments there to.

Claims 4, 6 and 9-11 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 13 in part, 14-19, 22, 24 and 26, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112.

A telephone call was made to Applicant's representative, Clifford Mass, on September 13, 2005, wherein the Examiner discussed rejoinder of the process of claims. After a reviewing the process claims, a second call was made to Applicant's representative on September 19, 2005, wherein the rejections which would be applied if the process claims were rejoined was discussed. At this time, Applicant's representative, Clifford Mass, gave the Examiner permission to cancel the process claims in favor of an allowance of the allowable subject matter, i.e., the nucleic acid. Therefore, claims 13 in part, 14-19, 22, 24 and 26, directed to the process of making or using the patentable product have NOT been rejoined.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Clifford Mass on September 19/2005.

The application has been amended as follows:

Please amend the claims as follows:

Claims 1-3 (cancelled)

Claim 10 (currently amended) A An isolated host cell transformed with the expression vector of Claim 9.

Claims 12-28 (cancelled)

Please amend the specification as follows:

Delete on page 4, lines 23 to 24 the sentence which begins with "For example, the sequence..." and ends with "complementary sequence 5'-AGTAAGTCCAT-3'."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon J. Fetterolf, PhD whose telephone number is (571)-272-2919. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brandon J Fetterolf, PhD
Examiner
Art Unit 1642

BF


JEFFREY SIEW
SUPERVISORY PATENT EXAMINER
9/30/08